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In the Supreme Court of the United States

OCTOBER TERM, 1987

LOVE BOX COMPANY, INC.,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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QUESTIONS PRESENTED

The following questions are presented for review:

Are company expenditures for seminars (attended by employees, customers, and members of the public) which teach subjects such as individual freedom, responsibility, hard work, thrift, honesty, truthfulness, and integrity, tax deductible as ordinary and necessary business expenses under Section 162 of the Internal Revenue Code because:

(1) such seminars improve the job skills of employees and are, therefore, deductible as educational expenses; and

(2) such seminars advertise to customers, business associates and members of the public the ethics and values of the company and are, therefore, deductible as institutional or "good will" advertising.

PARTIES TO THE PROCEEDING

The caption of this case contains the names of all parties to this proceeding.

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LOVE BOX COMPANY, INC.,
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COMMISSIONER OF INTERNAL REVENUE.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

The Petitioner, Love Box Company, Inc. (hereinafter referred to as the "Company" or "Petitioner"), respectfully prays that a writ of certiorari issue to review the opinion and judgment of the United States Court of Appeals for the Tenth Circuit entered in this matter on March 28, 1988.

OPINIONS BELOW

The March 28, 1988, opinion of the Court of Appeals, whose judgment is sought to be reviewed herein, is as yet unreported. A copy of that opinion is reprinted in the separate Appendix A to this Petition, pp. A1-A16, *infra*. The prior opinion of the United States Tax Court, decided March 20, 1985, appears at 1985 PH T Memo paragraph 85,013. A copy of that opinion is reprinted in the separate Appendix B to this Petition, pp. A17-A29, *infra*.

JURISDICTION

The judgment of the Court of Appeals was entered on March 28, 1988. This Petition was filed less than sixty (60) days from such date. The jurisdiction of this Court is invoked under Internal Revenue Code §7482 and 28 U.S.C. §1254.

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES, AND REGULATIONS INVOLVED

No constitutional provisions, treaties, or ordinances are involved in this case. The statutes and regulations involved in this case are:

> Internal Revenue Code of 1954, Section 162(a):
>
> "In General - There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including—
>
> (1) a reasonable allowance for salaries or other compensation for personal services actually rendered;
>
> (2) traveling expenses (including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances) while away from home in the pursuit of a trade or business; and
>
> (3) rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business,

of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

"For purposes of the preceding sentence, the place of residence of a Member of Congress (including any Delegate and Resident Commissioner) within the State, congressional district, or possession which he represents in Congress shall be considered his home but amounts expended by such Members within each taxable year for living expenses shall not be deductible for income tax purposes in excess of $3,000."

Treasury Regulations, Section 1.162-5, reprinted in Appendix C, pages A30-A40, *infra*.

Treasury Regulations, Section 1.162-20, reprinted in Appendix C, pages A41-A51, *infra*.

STATEMENT OF THE CASE

This case concerns the right of a company to deduct for tax purposes the reasonable costs of educating its employees and advertising to its customers and others the Company's philosophical perspective on economic, financial, social, and other subjects of a general nature, which includes commitment to individual freedom and responsibility, free enterprise, fair dealing, excellence and quality of work in products and services, hard work, thrift, self-reliance, honesty, truthfulness, and integrity.

A. Nature of Company's Business

The Company is a Kansas corporation whose principal place of business is in Wichita, Kansas. (Stipulation of Facts, para. 1) During the tax years in question, the principal operations of the Company and the allied com-

panies of Sooner Box Company and Lewisburg Container Company consisted of the manufacture and sale of box, fiberboard and wood products, with facilities in Wichita, Kansas; Oklahoma City, Oklahoma; Tulsa, Oklahoma; Plummer's Landing, Kentucky; Lewisburg, Ohio; and Fayetteville, Arkansas, together with agricultural and farming operations in Kansas and real estate operations in Scottsdale, Arizona. (Stipulation of Facts, para. 16; Transcript, hereinafter referred to as "T." 26-29)

B. Love Philosophical Perspective

Over many years the Company has developed a strong corporate philosophy concerning economic, financial, social and other subjects of a general nature, which includes commitment to individual freedom and responsibility, free enterprise, fair dealing, excellence and quality of work in products and services, hard work, thrift, self-reliance, honesty, truthfulness, and integrity (T.13-16, 20, 24-25, 34, 36-37, 41-42, 63, 65-67, 73-75, 88), which was referred to by the United States Tax Court as the "Love Philosophical Perspective." (Appendix B, p. A19, *infra*)

The Company developed a strategy to project and communicate its corporate philosophy to employees, customers, suppliers, the business community and the public through speeches, seminars and other forms of communication. For example, the Company sponsored newspaper advertisements containing articles by writers who could articulate individual freedom to the public. (T.53-54; Exhibits 11-J, 12-K, 13-L, and 14-M) Mr. Love makes from 25 to 100 speeches yearly to groups in the business community, personnel and management meetings of customers and suppliers, and the general public, including the Wichita Rotary Club (T.18), which contains approximately 500 members and major customers and suppliers

of the Company. (T.57) As a part of the Company's education and advertising program, the Company has for many years presented seminars and other communications by such persons as Dr. Hans Sennholz, Chairman of the Department of Economics at Grove City College, Dr. Henry Hazlitt, and Mr. Leonard Reed of the Foundation for Economic Education, together with yearly seminars presented by Mr. Robert LaFevre since about 1966 or 1967. (T.19)

Mr. LaFevre also presented such seminars to many other companies around the country. (T.22) Each LaFevre seminar is an intensive, five-day course involving 40 hours of lectures. (T.20) The seminars at issue in this case are two seminars presented by Mr. LaFevre on August 7-11, 1978, and on August 27-31, 1979 (hereinafter referred to as the 1978 and 1979 seminars). (Stipulation of Facts, para. 5, para. 22; T.18-19, 22, 40, 53-54, 57, 82-83) The 1978 and 1979 seminars presented the Company's corporate philosophy and discussed such subjects as the nature of man, the nature of the free market, economic history, money, banking, free enterprise, the benefits of a voluntary marketplace, individual liberty and freedom, individual responsibility, truthfulness, fair dealing, excellence, hard work, honesty, and self-discipline. (Exhibit 8-H; T.20, 72, 77-79, 83-85, 90)

The Company first invited its own employees to the seminars. (T.22) Attendance was voluntary, in keeping with the Company's philosophy, and any employee could attend. (T.22, 82) By making attendance voluntary, the Company was able to identify those employees who began to relate to and function successfully with the Company. (T.22) Employees were given free time off to attend without any reduction in pay. (T.22, 83) Over the years,

employees from a wide cross-section of the Company work force attended. (Exhibits 9-10; T.19)

The 1978 seminar was attended by ten employees, including employees with job titles of General Manager, Production Employee, Insurance Department Secretary, Sales Person, Production Office Secretary and Maintenance. (Exhibit 9) The 1979 seminar was attended by seven employees, including employees with job titles of Plant Manager, Data Processor, Sales Person, Production Engineer, Timber Buyer, and Executive Secretary. (Exhibit 10)

The LaFevre seminars were limited to 35 individuals. (Stipulation of Facts, para. 10) If enough employees volunteered to attend a particular seminar, no other persons were invited. (T.22) When space became available, the Company made it known to customers, suppliers, area students and other interested persons that others could attend who desired to do so. (T.23, 40) The 1978 and 1979 seminars were attended by representatives of the Company, customers and suppliers, a college president, a newspaper employee, area students and members of the public. (Exhibits 9 and 10) The Company believed that if many different types of persons attended, the resulting cross-fertilization and cultural exchange would be beneficial to the Company and its employees and contribute to the success of the seminars. (T.40)

C. Extent and Results of Philosophy

Although it reflects Mr. Love's personal views, and he as President sets the tone and direction for the Company, this philosophy is the reputation of the Company as a company. (T.38, 63)

The Company's corporate philosophy has resulted in many long-term relationships between the Company and others, including employees, suppliers and customers. (T.16, 63-64)

The business community has accepted and admired the Company's corporate philosophy, as reflected by the testimony of officials from two major customers, 7-Up Wichita Bottling Company and the Coleman Company. (T.88-90, 97-99)

The Company's philosophy has contributed to the Company's growth and success. (T16, 25, 63, 64-65) Sales grew from $2,532,467 in 1956 to $24,039,825 in 1979. (Stipulation of Facts, para. 13, 19) Employment grew from 45 employees in fiscal year 1956 to about 600 employees in fiscal year 1978. (Stipulation of Facts, para. 18) At the time of trial, the Company was receiving purchase orders from 10,000 to 15,000 customers. (T.30)

The Company's total costs for the 1978 and 1979 seminars was $8,949.91 and $9,545.01, respectively, including books, speaking fees and expenses, meeting room rentals and meals. (Stipulation of Facts, para. 8) The Internal Revenue Service denied the Company's deductions for the 1978 and 1979 seminar expenditures, and issued a Notice of Deficiency for additional income taxes for fiscal years 1976, 1978, and 1979. (Stipulation of Facts, para. 4; Exhibit 5-E; T.11) The Company petitioned the United States Tax Court on February 17, 1982, for redetermination of the deficiency. The United States Tax Court, in a Decision entered March 20, 1985, held that the seminar expenditures were not ordinary and necessary business expenses deductible under the Internal Revenue Code of 1954. The United States Court of Appeals for the Tenth Circuit, by a 2-1 decision, affirmed the decision of the Tax Court.

REASONS FOR GRANTING THE WRIT

This case presents the Supreme Court with an important question of federal tax law which has not been, but should be, settled by the Court. The Company contends its expenses of presenting the LaFevre seminars were deductible under Section 162(a) of the Internal Revenue Code as educational expenses for employees and/or institutional or "goodwill" advertising. By holding such expenses were not deductible, the Court of Appeals, by a 2-1 decision, has decided federal tax policy that could have far-reaching consequences for American business. If the Court of Appeals decision is allowed to stand, it would strike not only at the Company's program, but massive programs by other companies across the country who now educate their employees and customers with respect to their corporate cultures, values, and philosophies.

A. The Seminar Expenditures Were Deductible As Educational Expenses

1. The Legal Test

Educational expenses are deductible under Section 162, provided they meet the specific tests of Treasury Regulation 1.162-5. (Rev. Rul. 76-71, 1976-1 C.B. 308, 310) Specifically, educational expenses must either (1) maintain or improve job skills; or (2) meet the express requirements of the employer or the law for retention of employment. (Treas. Reg. 1.162-5[a][c][1] and [c][2]) The Company contends the educational expenses were deductible because the uncontroverted record evidence showed the seminars maintained or improved the job skills of employees.

2. Conflict Between Court of Appeals Majority and Minority Opinions

The majority of the Court of Appeals found the seminars improved employees generally but that the Company never bridged the gap from individual improvement to business improvement and stated:

> "[t]he record does not indicate that participation in the seminars improved job performance in any measurable way or that the company used seminar attendance to select employees for advancement. Rather, the company's testimony reveals that the seminars emphasized broad attributes which would be beneficial in any line of work or personal endeavor. The evidence presented by the company never bridged the gap from individual improvement to business improvement. The company's testimony never established how the seminars maintained or improved job skills which were a direct and proximate benefit to the company in the production and sale of wood and fiberboard products."

> "We do not deny that the teaching of individual freedom, responsibility, hard work, thrift, honesty, truthfulness, and integrity may have benefited the employees and thus benefited the company; but rather we conclude that the seminar expenses are more analogous to general education expenses which are too tenuous to the specific job skills of the company to qualify for deduction under section 162." (Appendix A, pp. A8-A9, *infra*)

The Court of Appeals majority opinion is directly refuted by uncontroverted record evidence. This was recognized by the dissenting opinion, which found that

the seminars did have a direct and proximate relationship in improving employment skills the Company required for its employees. Circuit Judge Baldock concluded in his dissent:

> "[M]erely because the seminars might benefit participants both inside and outside the work environment does not negate the evidence that the seminars had a positive effect on job-related skills. Even assuming that the taxpayer-company's president or its employees benefited personally, all that need be shown is that the seminars maintained or improved skills required in the taxpayer's business.
>
> "And on this point, the evidence is uncontroverted. The taxpayer-company had sponsored these seminars annually since 1949 as a way of motivating employees to take individual responsibility for their daily tasks. Rec. tr. at 18-19. The seminars reflect attributes of the company's management philosophy, for example, dependability and responsiveness in the marketplace. The company's president testified that the seminars were designed to reinforce 'an image with our customers that they would absolutely be able to depend upon us no matter what happened.' *Id.* at 20. Attendance at the seminars was not required, but attendance was used to identify those who might be suitable for advancement. *Id.* at 22. The president also testified that the management philosophy at the company was a key factor in its success in the corrugated box market. *Id.* at 25, 47. Indeed, the company's sales grew from $2.5 million in 1956 to over $24 million in 1979, and the number of employees increased from 45 employees in fiscal year 1956 to about 600 employees in fiscal year 1978.

> The vice-president and general manager of the company testified that the seminars had contributed to the success of the company, had helped retain better employees and had improved relationships with suppliers and customers. *Id.* at 63-64. The seminars were consistent with the way the company sought to differentiate itself from the competition (the large integrated box manufacturers) because the seminars stressed careful attention to customer needs. *Id.* at 67-68. One of the company's employees, who had worked at another box manufacturer, testified that the ideas presented at the seminars improved his performance. *Id.* at 86. ('It has made me a better salesman. My sales went from, well, it increased about six-fold in seven years. We must be doing something right.')." (Appendix A, *infra*, Dissenting Opinion, pp. A11-A13)

Circuit Judge Baldock pointed up the error of the majority in discounting the uncontroverted testimony, as follows:

> "The majority's legal conclusion regarding the educational expense issue rests in part on discounting the uncontroverted testimony of taxpayer's employees and customers. What is unusual about this case is that the taxpayer put on testimony of three company employees and two representatives of customers, and the testimony pertaining to the direct benefits of the expenditures to the taxpayer-company was disregarded. This is not a case where the Commissioner refuted the evidence of the taxpayer, as some of the facts were stipulated and the Commissioner called no witnesses. On cross-examination, the Commissioner unsuccessfully attempted to characterize the

seminar expenditures as political and non-deductible under Treas. Reg. § 1.162-20. The Commissioner did establish that the seminars would be useful in other endeavors, but that, in my view, cannot be a bar to deductibility.

"Without question, we are bound by the findings of the tax court unless clearly erroneous, but I fear that the tax court and the majority have substituted their judgment for that of the company, and have concluded that, because the education provided was too general and did not reach enough employees, it could not bear a proximate relationship to the company's business.

. . .

"Here, the taxpayer's employees were clearly the most knowledgeable about the applicability of the education to the company's strategic plan. Their testimony is reasonable and uncontradicted. Consequently, the taxpayer ought to prevail on the educational expenditure issue." (Appendix A, *infra*, Dissenting Opinion, pp. A14-A15)

3. Important Federal Tax Policy on What Types of Education Are Tax Deductible

The disagreement between the Court of Appeals majority and dissenting opinions is of far greater importance than the question of whether the seminars maintained or improved the job skills of employees of this Petitioner. *The Court of Appeals majority decision threatens the deductibility of billions of dollars of educational expenditures by hundreds of companies across the country which have massive programs to instill in their employees human relations skills, values, ethics and the unique cor-*

porate philosophies of such companies. According to a recent news article, hundreds of companies are investing at least $30 billion a year to educate their employees. (Solorzano, "Why Business Spends Billions Educating Workers," *U. S. News and World Report*, February 10, 1986, p. 50) The article points out that only one-third of this corporate money is spent at colleges and that most of it is spent inside the firms themselves—on courses largely designed by corporate officials and taught by corporate trainers whose main areas of expertise are knowledge of the companies and their needs. (*Ibid.*)

International Business Machines alone spends about $900 million a year on education, focusing on its own methods of doing business. (*Ibid.*) The importance of these educational programs, and the threat of this decision to them, is recognized by Circuit Judge Baldock in his dissenting opinion, when he stated:

> "Long-run survival of a manufacturing organization often depends upon a clear sense of direction and an ability to forecast future business trends. Strategic planning is all-important to a business in a competitive environment, because those businesses unable to adapt to change will disappear from the market in the long run. Just as important as a company's technological resources are the company's human resources, the people who make up the company. The unanimous testimony was that the seminars developed the human resources of the company and instilled a clear sense of the company's direction in the participants. On the first point, the seminars are analogous to a Dale Carnegie course which improves the human relations skills of the participants. On the second point, the seminars emphasized the

values which had made the company a success and insured its long-range survival. Among excellent companies, similar expenditures for such purposes would not be unusual. The authors of a best-selling work on the management of successful companies have written: 'Every excellent company we studied is clear on what it stands for, and takes the process of value shaping seriously. In fact, we wonder whether it is possible to be an excellent company without clarity on values and without having the right sorts of values.' T. Peters & R. Waterman, *In Search of Excellence,* 280 (1982). Thus, the seminar expenditures ought to be deductible as ordinary and necessary business expenses because they are incurred so that the company will prosper." (Appendix A, *infra,* Dissenting Opinion, pp. A13-A14)

The dissenting opinion recognizes that tax deductible corporate education is not limited to training employees about the nuts and bolts requirements of a job. Companies are composed of people, and companies across the country have recognized that the development of human relations skills and the instilling of ethics and values are all-important.

4. The Dale Carnegie Courses on Human Relations Skills

The dissenting opinion stated that the Company seminars in this case are "analogous to a Dale Carnegie course which improves the human relations skills of the participants." (*Ibid.*) Dale Carnegie spent 25 years researching philosophies and successful people and developed his principles for living. He published those principles in October, 1936, in a book called *How to Win Friends*

and Influence People (Pocket Books Ed. 1981). The book is still a top seller. It remained on the *New York Times* best seller list for ten years, and has sold more than 15 million copies in hardcover alone. ("50 Years of Winning," Book Review, *Sales & Marketing Management,* September, 1986, p. 21) The books of Dale Carnegie spawned the Dale Carnegie courses in effective speaking, human relations, sales, management, and professional development. (Dale Carnegie and Associates, Inc., *Effective Speaking and Human Relations Course Description,* 1979)

The basis for the majority opinion is the contention that the Company seminars improved the participants individually rather than the Company for which they worked. The Dale Carnegie courses are clearly general in nature, emphasizing broad attributes which would be beneficial in any line of work or personal endeavor. There is no question they benefit the individual participant. However, they also clearly improve the participants' job-related human skills and benefit greatly the companies for which they work.

The Court of Appeals majority decision appears to hold that human relations skills courses are not sufficiently job related to make the costs of such courses tax deductible. American businesses resoundingly disagree. The list of companies which have used such courses reads like a "Who's Who of American Businesses." For example, Dale Carnegie courses alone have been used by over 400 of the Fortune 500 companies. (Dale Carnegie Courses Advertising Brochure) As Dale Carnegie states in his book:

> "Even large, skeptical, conservative organizations such as the Westinghouse Electric Company, the McGraw-Hill Publishing Company, the Brooklyn Chamber of Commerce, the American Institute of Electrical

> Engineers and the New York Telephone Company have had this training conducted in their own offices for the benefit of their members and executives." (D. Carnegie, *How to Win Friends and Influence People*, [Pocket Books Ed. 1981], p. 252)

The graduates of Dale Carnegie courses include Chrysler Chairman Lee Iacocca; former Labor Secretary William E. Brock; and Mary Kay Ashe, Chairman of Mary Kay Cosmetics. (Nelton, "How to Win Friends—For Half a Century," *Nation's Business*, December, 1986, p. 41) Recently, the entire Chrysler management team took the courses. ("50 Years of Winning," *supra*)

In the lead advertisement in the May 9, 1988, issue of *Business Week*, Stew Leonard, owner of the world's largest dairy store, praises the Dale Carnegie courses as follows:

> "If you want to start a fire, you've got to strike a match. That's what Dale Carnegie Training does for us. It lights the fire of enthusiasm and improvement in our people."

While the Dale Carnegie course may be the first and foremost course in human relations skills, there are now untold others. ("American Scene - In Chicago: Seminars Everywhere," *Time*, October 12, 1987, p. 12) In the instant case, Love Box Company utilized numerous well-known educators, including the free enterprise advocate who gave the seminars in question. (T.22) These Company seminars stressed many of the same themes as the Dale Carnegie courses. For example:

> (a) The Company seminars stressed honesty, truthfulness, and integrity. Dale Carnegie says,

"Give honest and sincere appreciation." (D. Carnegie, *supra*, p. 31)

(b) The Company seminars emphasized individual freedom and responsibility. The Dale Carnegie course description states, "They (the courses) constantly instill in their subordinates a greater sense of self-management." (Dale Carnegie and Associates, Inc., *Management Course Description*, p. 2)

(c) The Company seminars instilled in employees an attitude of service and commitment to the customer. Dale Carnegie says, "Talk in terms of the other person's interests," and "So the rare individual who unselfishly tries to serve others has an enormous advantage." Dale Carnegie says, "If you want to make friends, let's put ourselves out to do things for other people—things that require time, energy, usefulness and thoughtfulness." (D. Carnegie, *supra*, pp. 45, 60, 112)

The Company seminars and the Dale Carnegie courses taught many similar attributes and human relations skills —skills that are valued and taught nationwide by American businesses.

If the Court of Appeals decision is allowed to stand, the tax deductibility of human relations skills training which has been used by businesses for decades, will be placed in jeopardy.

5. The Importance of Educating Employees in the Ethics and Values of a Business

The past few years America has been shocked by revelations of business wrongdoing; e.g., insider trading, money laundering, greenmail, the looting of savings

and loans, defense contractor overcharges, check kiting schemes, and fraud. To offset this growing vacuum concerning ethics and values of individuals and businesses, the educational community has begun large scale formal educational programs. For example, in March, 1987, Harvard Business School received a gift of $30 million to fund a teaching program in ethics to M.B.A. students. (Byrne & Beam, "Harvard's $30 Million Windfall for Ethics 101," *Business Week*, April 13, 1987, p. 40)

Many companies in the business community have also responded to these shocking unethical practices by articulating their own corporate ethics and then seeking to educate their employees concerning such ethical values. These trends by both education and businesses are discussed in a recent article which reads:

> "Corporations are rushing to adopt codes of ethics. Business schools are scrambling to add ethics courses. And hundreds of consultants are being hired to put 'integrity' into corporate cultures. Kenneth Blanchard, author of *The One Minute Manager*, is coming out with a breezy book on ethical management co-written by none other than Norman Vincent Peale." (Byrne, "Businesses are Signing Up for Ethics 101," *Business Week*, February 15, 1988, p. 56)

Andrew C. Bigler, Chairman of Champion International Corp., points out the importance of training employees about a corporate culture in ethical behavior by stating:

> " 'Sitting up here in Stamford,' explains Sigler, 'there's no way I can affect what an employee is doing today in Texas, Montana, or Maine. Making speeches and sending letters just doesn't do it. You

> need a culture and peer pressure that spells out what is acceptable and isn't and why. It involves training, education, and follow-up.'" (*Ibid.* p. 57)

At Chemical Bank, some 250 vice presidents have taken part in two-day seminars on corporate values that begin with an appearance by the Chairman. (*Ibid.*)

Petitioner has been a leader in this now-popular area of ethics and values with seminar programs dating back over thirty years. Love Box Company has instilled in a generation of its employees the values of individual freedom, responsibility, hard work, thrift, honesty, truthfulness and integrity—only to find after all these years that the I.R.S. considers such expenditures not to be ordinary and necessary and, therefore, nondeductible for tax purposes.

A company's values are coming to be recognized as essential to its success. T. Peters and R. Waterman, in a recent book published long after Petitioner's emphasis on a proper value system, conclude that a corporate statement of values is all-important:

> "Let us suppose that we were asked for one all-purpose bit of advice for management, one truth that we were able to distill from the excellent companies research. We might be tempted to reply, 'Figure out your value system. Decide what your company *stands for*.'" (T. Peters and R. Waterman, *In Search of Excellence* [1982], p. 79)

These authors then quote from Thomas J. Watson, Jr., of IBM in *A Business and Its Beliefs*:

> "Consider any great organization—one that has lasted over the years—I think you will find that it owes

its resiliency not to its form of organization or administrative skills, but to the power of what we call *beliefs* and the appeal these beliefs have for its people. This then is my thesis: I firmly believe that any organization, in order to survive and achieve success, must have a sound set of beliefs on which it premises all its policies and actions. Next, I believe that the most important single factor in corporate success is faithful adherence to those beliefs. And, finally, I believe if an organization is to meet the challenge of a changing world, it must be prepared to change everything about itself except those beliefs as it moves through corporate life. In other words, the basic philosophy, spirit, and drive of an organization have far more to do with its relative achievements than to technological or economic resources, organizational structure, innovation, and timing. All these things weigh heavily in success. But they are, I think, transcended by how strongly the people in the organization believe in its basic precepts and how faithfully they carry them out." (T. Peters and R. Waterman, *supra,* p. 281)

The authors then conclude:

> "Every excellent company we studied is clear on what it stands for, and takes the process of value shaping seriously. In fact, we wonder whether it is possible to be an excellent company without clarity on values and without having the right sorts of values." (T. Peters and R. Waterman, *supra*, p. 280)

Robert D. Love, President of the Petitioner, testified to the importance Petitioner has given to educating its employees about values and ethics since 1949:

"Q: Have you also found other people who you felt could help educate your employees, suppliers and customers about some of the things that you believe in?"

"A: Well, we had to because even though I'm the boss and even though I supposedly am the biggest stockholder, and even though I supposedly have the biggest stick, that really doesn't help. Your credibility is determined by your actions. And while my actions have been consistently what I've said, I have also not had the time to do the depth of education that I would want other people to do. That's why we have had company seminars year after year ever since 1949." (T.18-19)

"A: I have always felt that they were a part of the training just the same as the technical training to teach a man the different kinds of flutes, the different grades of paper, the different kinds of printing, the different kinds of inks. He also has to have a philosophical position about his work. That if he was going to come 8:00 to 5:00 and that's all we got from him, I wasn't interested. We had to have somebody who was with us spiritually, mentally, and physically." (T.25-26)

This concept of continual education of employees was confirmed by Vice President Rogers:

"A: Well, certainly, the way we do business it has been a big contributing factor. Two things, I think it was mentioned and it's certainly true that all people do not necessarily like the freedom that they have. Many people like to be supervised. In our scheme of things at our business, why we encourage this idea of individual freedom and the voluntary associations and making yourself attractive to your

customers, your suppliers, all these things that to me are difficult, they're not the easiest thing to do. It's important that our employees understand. I think they're educable in this area. I think they can be taught that these are good attributes to have. And, consequently, I think that our success is a result of better employees who understand this.

"Now, I wouldn't suggest that 100 percent understand this idea to the same degree. But it's my own feeling that those who have taken on the philosophy, understood it, practiced it, are the much better employees." (T.65-66)

Petitioner is obviously in the forefront of modern excellent companies who understand that educating employees involves more than teaching them accounting methods or the mechanics of running machines. It involves human relations skills, values, ethics, and a business philosophy and culture.

The Court of Appeals majority opinion which denies deductions for the cost of such employee education jeopardizes the right of all American companies to set their values and then to educate their employees in understanding and carrying out these values. This cuts at the lifeblood of modern excellent companies which are currently spending billions of dollars a year to educate their employees on subjects that go far beyond narrow, specific job skills. The tax deductibility of such educational expenses has now been called into question by a disagreement among federal judges in the United States Court of Appeals for the Tenth Circuit—a disagreement that could ripen into a conflict among the circuits as similar cases arise.

The Supreme Court should grant this writ of certiorari so that it can speak clearly on this important ques-

tion of federal tax policy. It should stand squarely in support of companies like Petitioner who want to educate their employees on human relations skills, ethics, and important values such as individual freedom, responsibility, hard work, thrift, honesty, truthfulness and integrity.

B. The Seminar Expenditures Were Deductible As Good Will Advertising

The Court of Appeals majority also denied the deductibility of the Love Box seminar expenditures because they found these expenditures did not meet the requirements of good will advertising. The courts have made it clear that a company has great discretion in choosing the methods of advertising it believes will promote its name to the public and increase business. Moreover, such advertising can take unusual forms and be deductible under the Internal Revenue Code (*Poletti v. Commissioner*, 330 F.2d 818 [8th Cir. 1964]). Therefore, businesses have great discretion to tailor their advertising to those methods they believe will promote good will and business for them.

The requirements for deducting expenditures for institutional or "good will" advertising are set forth in Treasury Regulation 1.162-20(a)(2), which provides in pertinent part that:

> "Expenditures for institutional or 'goodwill' advertising which keeps the taxpayer's name before the public are generally deductible as ordinary and necessary business expenses provided the expenditures are related to the patronage the taxpayer might reasonably expect in the future."
>
> . . .
>
> "In like fashion, expenditures for advertising which presents views on economic, financial, social, or other

subjects of a general nature, but which does not involve any of the activities specified in paragraph (b) or (c) of this section for which a deduction is not allowable, are deductible if they otherwise meet the requirements of the regulations under section 162."

The Court of Appeals found that, although the evidence circumstantially connected the seminars with a business purpose, "the Company failed to meet its burden in showing a direct relationship between the seminar's focus upon individual character development and the Company's solicitation of new customers." (Appendix A, p. A10, *infra*) This conclusion is rejected by Circuit Judge Baldock, who found a direct and proximate relationship between the seminars and the Company's business, when he stated:

> "For similar reasons, I cannot agree with the decision of the tax court and the majority to deny a deduction for institutional or 'goodwill' advertising expenses under Treas. Reg. §1.162-20(a)(2). Again, the company's president and general manager and representatives of the two large corporate customers testified as to the promotional value of the seminars. Rec. tr. at 35-36, 68, 88-90, 97-98. Treas. Reg. §1.162-20(a)(2) merely requires that these types of expenditures are deductible if they 'are related to the patronage the *taxpayer* might reasonably expect in the future.' (Emphasis added.). The employees of the taxpayer so testified, but the majority would require the taxpayer to prove that the seminars influenced the customers to become customers. Majority Opinion at 10. This is not the test. Nor must there necessarily be a showing that the seminar expenses assisted in the company's 'solicitation of new customers.' *Id.* at 11. Promotional expenses designed to retain old customers surely are deductible. All of

> the uncontradicted evidence indicates that making the extra places available to representatives of customers is 'related to the patronage the *taxpayer* might reasonably expect in the future.' Treas. Reg. §1.162-20(a)(2). The regulation's test is one of a reasonable prospect of securing future patronage. This does not require market studies and strict quantitative proof (which probably would cost more than the seminars); the majority and the tax court simply place too great a burden on the taxpayer to prove *post hoc* the effect of promotional expenditures." (Appendix A, Dissenting Opinion, *infra,* pp. A15-A16)

The testimony of Company employees and customers supported the promotional value of the seminars and their relationship to business the Company might reasonably expect in the future. President Love testified:

> "Q: Do you expect in the future that it will help your patronage from the business community to continue with these kinds of seminars?"
>
> "A: Absolutely." (T.25)

Vice President Rogers testified:

> "Q: Do you believe that the use of these various seminars and speeches, and so forth, keep your name in front of the public that you deal with that are potential customers or customers of yours and help you?"
>
> "A: Well, certainly. Love Box has an image and a reputation for these attributes that we're talking about. And they understand it, and I think that it's been a tremendous asset. My thirty years have been involved with sales and it has been an asset that's made my job easier."

"Q: As far as making sales and helping you to make sales, do you believe it promotes good will for you, that it works as a good advertising tool for you?"

"A: Yes."

"Q: And I'm referring to these seminars and speeches particularly in 1978 and 1979 that you attended."

"A: Very much so. Very much so." (T.67-68)

The two major customers also testified that the seminars influenced their decisions as customers. First, Mr. Frazier of 7-Up Wichita Bottling Company testified:

"Q: Are the views and the image and the philosophy that we've heard discussed this morning, and I'm referring now, if you will, to 1978 and 1979, were those important to you as a customer or potential future customer?"

"A: Absolutely." (T.88-89)

. . .

"And when you want to do business with people, you want to do business with companies that will deliver you good products, that will treat you honestly, that have good self disciplined employees, things of this nature. So, sure, we want to do business with them." (T.89)

Mr. Keller, former Coleman Vice President then added:

"Q: Directing your attention to the years 1978 and 1979, would you agree with the general discussions which have been had with the other witnesses concerning Love Box's personality and image on the areas of individual freedom and responsibility, free enterprise, excellence, hard work, thrift, so forth, that have been discussed?"

"A: I fully agree. It has been very obvious."

"Q: Let me ask you this. Those views and that image, are those important to you as a customer, for Coleman as a customer?"

"A: Certainly." (T.96-97)

In view of the convincing evidence presented in this case as set forth above, it is clear that the actual message being conveyed by the majority opinion is not that the Company failed to prove a direct relationship between the seminars and solicitation of new customers, but rather that good will advertising through seminars which focus upon individual and corporate values and ethics are too general to be deducted as ordinary and necessary expenses of doing business. If allowed to stand, this erroneous decision will do great mischief to the business and social condition of this nation.

It is axiomatic that a "good" corporate ethic and value system attracts business, and that a "bad" corporate ethic and value system destroys business. As stated in an article in *Training and Development Journal,* November, 1987, entitled "Formalizing Business Ethics: 'It (an ethical program) obviously helps build a good reputation for the company.'" (Genfan, pp. 35-37)

The other side of this axiom is set forth in a recent article in the September, 1987, issue of *C A Magazine* entitled "Is Ethics any Business of Business?" This question is answered with a resounding quote:

"From a 'strictly business' point of view (according to which activities are justified only if they pay off in the long run), the answer is yes—because unethical behavior alienates clients and loses business." (Narveson, p. 64)

In the recent furor over the amoral condition in which most of society flounders today, some companies have gone to great lengths—after their public shame—to try to re-

capture their share of the market by publicizing new-found ethical behavior. In an interesting article entitled "The Right Time to Teach Ethics," the October 21, 1985, issue of *Business Week* notes:

> "Companies, like individuals, often discover a keen new interest in religion or ethics after they have gotten into a lot of trouble."

and then points out:

> "A code of ethics hastily patched together even by experts simply to counteract bad publicity can look like no more than an empty public relations gesture, a cynical attempt to hide the same old tainted business practices under a shiny new coat of varnish." (Editorial, p. 146)

But in no circumstance in any news article or reported court case has there ever previously been even an innuendo that the costs of training in ethical behavior, as well as the costs of good will advertising through publicizing such ethical behavior, would not be a proper business deduction as an ordinary and necessary expense of doing business.

In fact, what these comments and articles point out is: (a) there is a definite relationship between the ethical value system of a company and its ability to obtain and retain business; (b) it is important that such ethical value system be publicized to the public, including its customers and prospective customers over a long period of time; and (c) that such ethical value systems actually be put into practice by the companies and their employees.

A recent Gallup Poll found that 72 percent of the American people believe that the ethical standards of business executives are "average, low or very low"! (*Gallup Poll, Ethical Standards of Various Professions,* August, 1985) If this belief is not well-founded, companies

should be about the business of advertising this fact to the public. If the belief is well-founded, then even more importantly the business community needs to be engaged in educating their employees to act with individual freedom, responsibility, hard work, thrift, honesty, truthfulness and integrity, and then to publicize and advertise these facts to the public, including their customers and prospective customers, through every available means.

The expense of such advertising must obviously be an ordinary and necessary part of doing business in today's confused—and sometimes even chaotic—moral climate. If the majority opinion is allowed to stand and companies are told that it is not an ordinary and necessary expense of doing business to advertise to the public that they espouse and carry out traditional values of individual freedom, responsibility, hard work, thrift, honesty, truthfulness and integrity, then it will surely erode rather than build such values in the business community throughout the United States.

CONCLUSION

Obviously, $19,000 in seminar expenditures for a company doing $24 million worth of business annually is not highly significant—in monetary amount. But the Court of Appeals decision will have a far-reaching impact on the future ability of business all over America first to educate their employees and then to advertise to their customers and prospective customers that they espouse and carry out traditional values of individual freedom, responsibility, hard work, thrift, honesty, truthfulness and integrity. This Court has stated, "What is ordinary . . . is . . . a variable affected by time and place and circumstance." (*Welch v. Helvering,* 290 U.S. 111 [1933]) It is obvious

that this is a time and place and circumstance in which our society needs to be deeply involved in training in the area of human relations skills and advertising corporate values of individual freedom, responsibility, hard work, thrift, honesty, truthfulness and integrity. If the Court of Appeals decision stands, it will jeopardize the tax deductibility of millions or even billions of dollars in educational and advertising expenses for hundreds or thousands of companies which have obviously considered these expenditures tax deductible until the majority opinion was rendered in this case.

For all the foregoing reasons, Petitioner respectfully requests that this Court grant a writ of certiorari to decide this disputed and important legal question of federal tax policy.

Respectfully submitted,

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May 20, 1988

APPENDIX

APPENDIX A

(Filed March 28, 1988)

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

LOVE BOX COMPANY, INC., Appellant,	)	
v.	)	No. 85-1804
COMMISSIONER OF INTERNAL REVENUE, Appellee.	)	

APPEAL FROM THE FINAL DECISION OF THE
UNITED STATES TAX COURT
(T.C. Docket No. 3641-82)

Marvin J. Martin (Donald E. Hill with him on the brief), Martin, Churchill, Overman, Hill & Cole, Chartered, Wichita, Kansas, for Appellant.

Bruce R. Ellisen, Attorney, Tax Division (Glenn L. Archer, Jr., Assistant Attorney General; Michael L. Paup and Richard Farber, Attorneys, Tax Division, with him on the brief), Department of Justice, Washington, D.C., for Appellee.

Before McKAY, McWILLIAMS, and BALDOCK, Circuit Judges.

McKAY, Circuit Judge.

The issue before the court is whether the costs a company incurred in sponsoring seminars by a well-known free enterprise advocate are deductible expenses under the Internal Revenue Code of 1954 (I.R.C.).[1]

Love Box Company, Inc. (Company) is a Kansas corporation which manufactures and sells boxes and other fiberboard and wood products. The Company operates facilities located in Kansas, Oklahoma, Kentucky, Ohio and Arkansas. The Company is also engaged in agricultural operations in Kansas and in real estate enterprises in Arizona. Over the years, the Company has developed a strong corporate philosophy concerning economics, finances, societal interests, and other subjects of a general nature. This philosophy manifests itself in a commitment to such things as individual freedom and responsibility, free enterprise, excellence and quality in products and service, honesty, truthfulness, hard work and integrity.

The Company has actively sought to project its philosophical perspective to its employees and customers by arranging public speeches and seminars. For many years the Company has sponsored seminars by well-known scholars. The stated purpose behind these seminars was to educate Company employees and to advertise the Company's perspective to the public. In 1978 and 1979, the Company sponsored two intensive, five-day seminars featuring Mr. Robert LaFevre. The seminars were limited to thirty-five participants, and employees were given first priority to attend. Attendance was voluntary, and any of the Company's employees who desired to attend were given time off work without a reduction in pay.

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1. Unless otherwise indicated, all statutory references are to the Internal Revenue Code of 1954, as amended, and in effect for the years 1978 and 1979, the years in issue.

Of approximately 600 employees, 10 attended the 1978 seminar and 7 attended the 1979 seminar. Record, exh. 9 and 10. The remaining attendees for both years included two customers, two prospective customers, other business representatives, and individuals from the general public.

In presenting the 1978 and 1979 seminars, the Company incurred expenses of $8,949.91 and $9,545.01 respectively. The primary costs were the speaking fees, room, and meals of Mr. LaFevre. Record, vol. 1, doc. 10, at 3. The Company deducted these costs as part of their "Public Promotion" expenses. Upon audit, the Commissioner determined that these expenses were not deductible because they were not ordinary and necessary business expenses under I.R.C. § 162. *Id.*, vol. 1, doc. 11, at 11-12.

The Company filed a petition with the Tax Court seeking a redetermination of the deficiencies assessed by the Commissioner. The Tax Court found that no proximate relationship existed between the seminars and the job skills of the Company employees. Therefore, the seminar expenses were not deductible as educational expenditures which maintained or improved job skills. *See* Treas. Reg. § 1.162-5 (as amended in 1967). The Tax Court also found that the relationship between the non-employee attendees and the Company was too tenuous to justify the Company's claim that the expenses could alternatively be deducted as "good will" advertising. *See* Treas. Reg. § 1.162-20(a)(2) (as amended in 1969). Both rulings are before this court upon appeal.

Congress directed the United States Courts of Appeals to review tax court decisions "in the same manner and to the same extent as decisions of the district courts

in civil actions tried without a jury." I.R.C. § 7482. Appellate courts ordinarily apply a "clearly erroneous" standard when presented with factual questions. *Commissioner v. Duberstein*, 363 U.S. 278, 289-91 (1960) (review of whether a transaction constitutes a gift under the I.R.C. raised a factual issue subject to "clearly erroneous" standard). A *de novo* standard of review is used when evaluating questions of law. *Helvering v. Tex-Penn Oil Co.*, 300 U.S. 481, 491 (1936) (review of tax board decision was "a conclusion of law or at least . . . mixed question of law and fact" and is subject to independent judicial review). However, the standard of review of mixed questions is not entirely established.[2] *See Pullman-Standard v. Swint*, 456 U.S. 273, 289-90 n.19 (1982). The Circuit Courts of Appeals have applied both *de novo* and clearly erroneous review when deciding mixed questions of law and fact. *Id.* The Tenth Circuit has concluded that if "the mixed question involves primarily a factual inquiry, the clearly erroneous standard is appropriate. If, however, the mixed question primarily involves the consideration of legal principles, then a *de novo* review by the appellate court is appropriate." *Supre v. Ricketts*, 792 F.2d 958, 961 (10th Cir. 1986); *see United States v. McConney*, 728 F.2d 1195, 1200-04 (9th Cir.), *cert. denied*, 469 U.S. 824 (1984) (a "clearly erroneous" standard is applied if the issue tends to be more factually based and concerns factors more appropriately decided by the trial court).

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2. The Supreme Court has defined mixed questions as those "in which the historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the statutory standard, or to put it another way, whether the rule of law as applied to the established facts is or is not violated." Pullman-Standard v. Swint, 456 U.S. 273, 289 n.19 (1982).

Since we must consider both the facts regarding the 1978 and 1979 seminars and the law as applied by section 162, this case presents a mixed question of fact and law. Courts reviewing section 162 expenses have usually emphasized the factual characteristics surrounding the expenditures. The Supreme Court stated early on that "[w]hether an expenditure is directly related to a business and whether it is ordinary are doubtless pure questions of fact in most instances. Except where a question of law is unmistakably involved[,] a decision of the Board of Tax Appeals on these issues . . . should not be reversed by the federal appellate courts." *Commissioner v. Heininger*, 320 U.S. 467, 475 (1943) (footnote omitted); *see Welch v. Helvering*, 290 U.S. 111, 114-15 (1933) (payments to creditors not ordinary and necessary business expenses under the facts of that particular situation); *Glasgow v. Commissioner*, 486 F.2d 1045, 1046 (10th Cir. 1973) (per curiam) (expenses of educational courses deducted under I.R.C. § 162(a) involved "essentially a question of fact"). To resolve the issues before us now, we must examine the characteristics and circumstances of the 1978 and 1979 LaFevre seminars and determine how these features link the seminars to the business purpose of the Company. Therefore, we regard these issues as primarily factual and will uphold the findings of the tax court unless the findings are clearly erroneous.

"Whether and to what extent deductions shall be allowed depends upon legislative grace; and only as there is clear provision therefore can any particular deduction be allowed." *New Colonial Ice Co. v. Helvering*, 292 U.S. 435, 440 (1934). Moreover, the taxpayer bears the burden of proving that his expenditures are deductible. *Welch v. Helvering*, 290 U.S. at 115; *Medco Products Co. v. Commissioner*, 523 F.2d 137, 138 (10th Cir. 1975).

Section 162 and its supporting regulations create a framework which allows deductions for various types of expenses, including certain educational and advertising expenses. The primary requirement for deductibility under section 162 is that the particular expense be an ordinary and necessary expense which bears a "proximate and direct relationship to the taxpayer's trade or business." *Carroll v. Commissioner*, 51 T.C. 213, 218 (1968), *aff'd*, 418 F.2d 91, 95 (7th Cir. 1969). Thus, our examination of whether plaintiff's educational and advertising expenses come within section 162 deductibility focuses on whether the expenses bear a close enough relationship to the Company's business to say that they are ordinary and necessary.

The Company first claims that the LaFevre seminar expenses are deductible by the company as ordinary and necessary education expenses of its employees.[3] Education expenses satisfy the ordinary and necessary requirement of section 162 provided they meet the enumerated tests of Treasury Regulation 1.162-5. Rev. Rul. 76-71, 1976-1 C.B. 308, 310. Treasury regulation 1.162-5 sets forth a series of nonqualifying and qualifying tests. The first examination is to see if the educational expense is disqualified from deduction because it was incurred to (1) meet the minimum educational requirements of

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3. We note at the outset that the education expense deduction is historically provided to an *individual* who makes expenditures to maintain or improve his job skills. Treas. Reg. § 1.162-5(a). When a corporation makes expenditures to help employees improve their job skills, the expenditures are more frequently deducted under section 162 as ordinary and necessary expenses of doing business or as some form of compensation to the employee. Because the case law in this area is so fact-oriented and geared to individual taxpayers, the guidance provided by the application of previous decisions must primarily be by analogy.

the trade or business or (2) qualify the taxpayer for a new trade or business. Treas. Reg. 1.162-5(b)(2) and (3). Provided the educational expenses are not disqualified from deduction, they must also satisfy the qualifying requirement of either (1) maintaining or improving job skills or (2) meeting the express requirements of the employer or the law for retention of employment. Treas. Reg. 1.162-5(a), (c)(1) and (c)(2). In satisfying the requirement of maintaining or improving skills required in his employment, it is insufficient that the educational expenses merely improve general skills. To be deductible the expenses must improve skills that bear a "proximate and direct relationship to the taxpayer's trade or business."[4] *Carroll v. Commissioner*, 51 T.C. 213, 218 (1968), *aff'd*, 418 F.2d 91, 95 (7th Cir. 1969); *see Anaheim Paper Mill Supplies, Inc. v. Commissioner*, 37 T.C.M. (CCH) 403 (1978) (although employer's expenses for employee's general college education were generally beneficial to the company, they were not deductible because there was no direct relationship between the skills required to operate the company's business and the courses taken); *see generally Smith v. Commissioner*, T.C. Memo 1981-149 (1981) (business classes were not proximately related

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4. Prior to 1967, Treasury Regulation 1.162-5 required that educational expenses be undertaken with the primary purpose of maintaining or improving skills required in the taxpayer's trade or business. This primary purpose requirement was eliminated by an amendment to the regulation in 1967. Treas. Reg. 1.162-5 (as amended by T.D. 6918, 1967-1 C.B. 36); *see also* Carroll v. Commissioner, 418 F.2d at 91, 94-95. Although the improving of skills no longer has to be the primary purpose for the educational expenses, the skills improved must still bear a direct relationship to the taxpayer's trade or business. Schwartz v. Commissioner, 69 T.C. 877, 889 (1978) (taxpayer failed to prove "sufficient nexus" between expenses and skills of business); McAuliffe v. Commissioner, T.C. Memo 1980-89 (education deduction disallowed because expenses only tenuously related to job skills).

to skills of section foreman in the quality control department); *McAuliffe v. Commissioner,* T.C. Memo 1980-189 (1980) (English classes increased defense attorney's general understanding and competency but did not proximately relate to the improvement of legal skills); *Baker v. Commissioner,* T.C. Memo 1971-279 (1971) (courses in geology, economics of transportation, etc. were not closely enough related to improve flight operations officer's job skills).

In the present case, the commissioner did not argue that the seminar expenses were nondeductible because they were disqualified, but rather because they did not meet one of the two qualifying tests. The Company did not contend that the seminar expenses were an express requirement as a condition to continued employment. In fact, the record reveals that attendance at the seminars was purely voluntary. Thus, in light of the above authority, the expenses for the LaFevre seminar would be deductible only if the Company could demonstrate that the seminars maintained or improved job skills in its employees that directly contributed to its trade and business. The Company gave testimony that the seminars promoted a philosophy based upon traits such as honesty, self-reliance, and dependability. Record, transcript, at 23-26, 84-85. However, the record does not indicate that participation in the seminars improved job performance in any measurable way or that the Company used seminar attendance to select employees for advancement. Rather, the Company's testimony reveals that the seminars emphasized broad attributes which would be beneficial in any line of work or personal endeavor. The evidence presented by the Company never bridged the gap from individual improvement to business improvement. The Company's testimony never established how the seminars

maintained or improved job skills which were a direct and proximate benefit to the Company in the production and sale of wood and fiberboard products.

We do not deny that the teaching of individual freedom, responsibility, hard work, thrift, honesty, truthfulness, and integrity may have benefited the employees and thus benefited the Company; but rather we conclude that the seminar expenses are more analogous to general education expenses which are too tenuous to the specific job skills of the Company to qualify for deduction under section 162. In light of the evidence and our deferential standard in this case, the Tax Court's finding that the seminar expenses were too attenuated from the Company's business purpose to be deductible as ordinary and necessary education expenses was not clearly erroneous.

The Tax Court also ruled that the "relationship between the nonemployee attendees of the seminar and the business . . . [was] too tenuous to support a deduction for advertising expenses." Treas. Reg. § 1.162-20(a)(2). Record, doc. 11, at 12. An advertising and promotional scheme may be deductible even though the methods are unusual or nonconventional. *Poletti v. Commissioner,* 330 F.2d 818, 822 (8th Cir. 1964). However, "[t]he burden still remains upon the taxpayer to prove the connectivity of business purpose to establish his right to the claimed, deductible expenses." *Id.* at 824. If the cost relates to an activity more properly characterized as personal, the deduction cannot be allowed. *W. D. Gale, Inc. v. Commissioner,* 297 F.2d 270, 271 (6th Cir. 1971) (maintaining and operating racing speedboats was for personal pleasure and not for business purpose).

The Company claims the seminar expenses bear a direct relationship to its publicity and to the patronage it

might expect in the future, even though the seminars were only publicized by word-of-mouth and no evidence was produced to show that the seminars kept the Company's name before its advertising market. The 1978 and 1979 seminars were attended by only two of the Company's 10,000 to 15,000 customers, and by two potential customers. Record, exh. 9 and 10. The Company did produce as witnesses two of its current customers. Both customer-witnesses regarded the Company's philosophy as important because it represented an excellent "corporate culture" that was favorable to their business relationship. Record, transcript, at 88-89, 96-99. However, this testimony does not reveal that the seminars in any way influenced these witnesses to become customers. Indeed, one customer-witness testified upon cross-examination that he would attend such seminars regardless of who promoted the event. "I know some other people who have sponsored LaFevre seminars and I think they're pretty much the same kind of people." *Id.* at 92. This witness went on to testify that "I think people who attend this kind of seminar, it helps them to get a broad picture, a philosophical outlet, direction, and yes, I think that helps them a lot." *Id.* at 93. Although the evidence presented by the customer-witness circumstantially connects the seminars with a business purpose, we agree that the Company failed to meet its burden in showing a direct relationship between the seminar's focus upon individual character development and the Company's solicitation of new customers. We conclude that the finding of the Tax Court was not clearly erroneous.

AFFIRMED.

No. 85-1804, Love Box Co., Inc. v. Comm'r.

BALDOCK, Circuit Judge, dissenting.

I agree with the majority that this case involves review of a mixed question of law and fact, whether educational seminar expenses of the taxpayer are deductible as ordinary and necessary business expenses pursuant to I.R.C. § 162. *See* Rev. Rul. 76-71, 1976-1 C.B. 308, 310 (educational expenses incurred by employer for employees are deductible as ordinary and necessary business expenses if test of Treas. Reg. § 1.162-5 met). There appears to be no disagreement that the subjects taught at the seminars, economic history, comparative economics and philosophy, were valuable to the participants. The tax court and the majority have concluded that the taxpayer-company failed to establish a direct relationship between the seminars and improved job performance so as to entitle the taxpayer to deduct the expenses of the seminars as employee educational expenses. Majority Opinion at 9-10; *Love Box Co. v. Comm'r*, 49 T.C.M. (CCH) 479, 481 (1985). Also, the tax court and the majority have concluded that the seminar expenses are not deductible as advertising expenses because the taxpayer failed to prove that the seminars kept the taxpayer's name before the public or resulted in increased patronage. Majority Opinion at 11-12; *Love Box Co.*, 49 T.C.M. at 483. I dissent from these conclusions.

The majority has denied the educational expense deduction because "the seminars emphasized broad attributes which would be beneficial in any line of work or personal endeavor." Majority Opinion at 9. But merely because the seminars might benefit participants both inside and outside the work environment does not negate the evidence that the seminars had a positive affect on

job-related skills. Even assuming that the taxpayer-company's president or its employees benefited personally, all that need be shown is that the seminars maintained or improved skills required in the taxpayer's business.

And on this point, the evidence is uncontroverted. The taxpayer-company had sponsored these seminars annually since 1949 as a way of motivating employees to take individual responsibility for their daily tasks. Rec. tr. at 18-19. The seminars reflect attributes of the company's management philosophy, for example, dependability and responsiveness in the marketplace. The company's president testified that the seminars were designed to reinforce "an image with our customers that they would absolutely be able to depend upon us no matter what happened." *Id.* at 20. Attendance at the seminars was not required, but attendance was used to identify those who might be suitable for advancement. *Id.* at 22. The president also testified that the management philosophy at the company was a key factor in its success in the corrugated box market. *Id.* at 25, 47. Indeed, the company's sales grew from $2.5 million in 1956 to over $24 million in 1979, and the number of employees increased from 45 employees in fiscal year 1956 to about 600 employees in fiscal year 1978. The vice-president and general manager of the company testified that the seminars had contributed to the success of the company, had helped retain better employees and had improved relationships with suppliers and customers. *Id.* at 63-64. The seminars were consistent with the way the company sought to differentiate itself from the competition (the large integrated box manufacturers) because the seminars stressed careful attention to customer needs. *Id.* at 67-68.

One of the company's employees, who had worked at another box manufacturer, testified that the ideas presented at the seminars improved his performance. *Id.* at 86. ("It has made me a better salesman. My sales went from, well, it increased about six-fold in seven years. We must be doing something right.").

Long-run survival of a manufacturing organization often depends upon a clear sense of direction and an ability to forecast future business trends. Strategic planning is all-important to a business in a competitive environment, because those businesses unable to adapt to change will disappear from the market in the long run. Just as important as a company's technological resources are the company's human resources, the people who make up the company. The unanimous testimony was that the seminars developed the human resources of the company and instilled a clear sense of the company's direction in the participants. On the first point, the seminars are analagous to a Dale Carnegie course which improves the human relations skills of the participants. On the second point, the seminars emphasized the values which had made the company a success and insured its long-range survival. Among excellent companies, similar expenditures for such purposes would not be unusual. The authors of a best-selling work on the management of successful companies have written: "Every excellent company we studied is clear on what it stands for, and takes the process of value shaping seriously. In fact, we wonder whether it is possible to be an excellent company without clarity on values and without having the right sorts of values." T. Peters & R. Waterman, In Search of Excellence, 280 (1982). Thus, the seminar expenditures ought to be deductible as ordinary and nec-

essary business expenses because they are incurred so that the company will prosper.

The majority's legal conclusion regarding the educational expense issue rests in part on discounting the uncontroverted testimony of taxpayer's employees and customers. What is unusual about this case is that the taxpayer put on testimony of three company employees and two representatives of customers, and the testimony pertaining to the direct benefits of the expenditures to the taxpayer-company was disregarded. This is not a case where the Commissioner refuted the evidence of the taxpayer, as some of the facts were stipulated and the Commissioner called no witnesses. On cross-examination, the Commissioner unsuccessfully attempted to characterize the seminar expenditures as political and non-deductible under Treas. Reg. § 1.162-20. The Commissioner did establish that the seminars would be useful in other endeavors, but that, in my view, cannot be a bar to deductibility.

Without question, we are bound by the findings of the tax court unless clearly erroneous, but I fear that the tax court and the majority have substituted their judgment for that of the company, and have concluded that, because the education provided was too general and did not reach enough employees, it could not bear a proximate relationship to the company's business. This approach is not in keeping with the current regulation which "established a more objective standard for determining whether the cost of education may be deducted as a business expense." *Carroll v. Comm'r*, 418 F.2d 91, 94 (7th Cir. 1969). The tax court said:

> The relationship between the seminars and the personal interests of Robert D. Love, however, is ob-

> viously more than coincidental. The generalized and self-serving testimony of petitioner's witnesses with respect to the benefits to be derived from the seminars cannot, therefore, carry petitioner's burden of proof, *regardless of the failure or inability of respondent to contradict their assertions.*

Love Box Co., 49 T.C.M. at 483 (emphasis added). Merely because the witnesses who testified on behalf of the taxpayer support the taxpayer's contentions does not mean that their testimony is to be disregarded as self-serving. *Weir v. Comm'r*, 283 F.2d 675, 680 (6th Cir. 1960); *cf. Byron v. Heckler*, 742 F.2d 1232, 1235 (10th Cir. 1984) (specific, legitimate reasons must be given for disregarding the opinion of a social security claimant's treating physician). Here, the taxpayer's employees were clearly the most knowledgeable about the applicability of the education to the company's strategic plan. Their testimony is reasonable and uncontradicted. Consequently, the taxpayer ought to prevail on the educational expenditure issue.

For similar reasons, I cannot agree with the decision of the tax court and the majority to deny a deduction for institutional or "goodwill" advertising expenses under Treas. Reg. § 1.162-20(a)(2). Again, the company's president and general manager and representatives of two large corporate customers testified as to the promotional value of the seminars. Rec. tr. at 35-36, 68, 88-90, 97-98. Treas. Reg. § 1.162-20(a)(2) merely requires that these types of expenditures are deductible if they "are related to the patronage the *taxpayer* might reasonably expect in the future." (Emphasis added.). The employees of the taxpayer so testified, but the majority would require the taxpayer to prove that the seminars influenced the cus-

tomers to become customers. Majority Opinion at 10. That is not the test. Nor must there necessarily be a showing that the seminar expenses assisted in the company's "solicitation of new customers." *Id.* at 11. Promotional expenses designed to retain old customers surely are deductible. All of the uncontradicted evidence indicates that making the extra places available to representatives of customers is "related to the patronage the *taxpayer* might reasonably expect in the future." Treas. Reg. § 1.162-20(a)(2). The regulation's test is one of a reasonable prospect of securing future patronage. This does not require market studies and strict quantitative proof (which probably would cost more than the seminars); the majority and the tax court simply place too great a burden on the taxpayer to prove *post hoc* the effect of promotional expenditures.

I would reverse.

APPENDIX B

(Filed February 9, 1985)

T. C. Memo. 1985-13

UNITED STATES TAX COURT

LOVE BOX COMPANY, INC.,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 3641-82. Filed January 9, 1985.

Marvin J. Martin and *David E. Hill*, for the petitioner.
David G. Hendricks, for the respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

COHEN, *Judge*: Respondent determined deficiencies in petitioner's Federal income taxes as follows:

Year	Deficiency
1976	$21,947
1978	14,099
1979	6,208

The issue to be determined is whether petitioner's expenditures for seminars attended by certain employees and customers of petitioner and by other members of the public are deductible under section 162(a).[1]

1. Unless otherwise indicated, all statutory references are to the Internal Revenue Code of 1954, as amended and in effect during the years in issue.

FINDINGS OF FACT

Love Box Company, Inc. (petitioner) is a Kansas corporation whose home office and principal place of business is in Wichita, Kansas. Petitioner filed Forms 1120, U.S. Corporation Income Tax Returns, for its taxable years ended September 30, 1976, September 30, 1978, and September 30, 1979, with the Internal Revenue Service Center in Austin, Texas. Petitioner filed Form 1120X, Amended U.S. Corporation Income Tax Return, for its taxable year ended September 30, 1976, with the Internal Revenue Service Center in Austin, Texas.

Some of the facts have been stipulated, and the stipulation and attached exhibits are incorporated herein by this reference. After concessions the only issue remaining in dispute is the deductibility of expenditures in the amounts of $8,949.91 and $9,545.01 during the fiscal years ended in 1978 and 1979, respectively, for seminars conducted by Robert LeFevre.

Petitioner was founded in 1923 by Walter L. Love, now deceased, the father of petitioner's current president and chief executive officer, Robert D. Love. During petitioner's fiscal years 1978 and 1979, Robert D. Love and other members of the Love family owned all of the outstanding stock of petitioner.

During the fiscal years 1978 and 1979, petitioner's principal operations consisted of the manufacture and sale of box, fiberboard and wood products from facilities in Wichita, Kansas, Oklahoma City, Oklahoma, Plummer's Landing, Kentucky, Lewisburg, Ohio, and Fayetteville, Arkansas. Petitioner was also engaged in agricultural and farming operations in Kansas and real estate operations in Scottsdale, Arizona.

From 1956 through 1978, petitioner's total sales rose from $2,532,467 to $18,971,323. Sales in the fiscal year 1979 were $24,039,885. From 1956 through 1978, the number of persons employed by petitioner rose from 45 to 600. As of the time of trial, petitioner was receiving purchase orders from 10,000 or 15,000 customers.

Robert D. Love maintained and advocated various views on economic, financial, social, and other subjects of a general nature, which included commitment to individual freedom and responsibility, free enterprise, fair dealing, excellence and quality of work in products and services, hard work, thrift, self-reliance, honesty and truthfulness, and integrity. These viewpoints espoused by Robert D. Love will hereinafter be referred to for convenience as the "Love philosophical perspective." The same or comparable viewpoints were adopted by various employees and customers of petitioner and were consistently encouraged in petitioner's day-to-day operations as well as in petitioner's advertising and other public communications.

The Love philosophical perspective was also presented in a series of seminars sponsored by petitioner, including two 5-day seminars presented by Robert LeFevre during 1978 and 1979. The expenses in issue in this case were incurred for presentation of those seminars. The LeFevre seminars were open to the public on a word-of-mouth basis, and attendance was not restricted to any group or classification of persons. Registration for the 1978 and 1979 seminars was limited to 35 persons.

Of the 35 individuals attending the 1978 seminar, 10 were employees of petitioner. Of the 28 individuals attending the 1979 seminar, 6 were employees of peti-

tioner. Attendance by employees was voluntary, and they were given time off from their jobs to attend without any reduction in pay.

Nonemployee attendees at the 1978 and 1979 seminars included employees of petitioner's suppliers, customers, and other business and personal acquaintances of petitioner's managerial employees, including Robert D. Love, and of petitioner's customers. Nonemployee seminar attendees were asked to make a contribution in the amount of $200 to Wichita Collegiate School, a tax-exempt school. Robert D. Love was a principal founder of Wichita Collegiate School and served as its chairman of the board from its inception around 1959 through the years in issue and to the time of trial. Contributions received by the school from seminar participants totaled $2,900 in 1978 and $2,800 in 1979.

ULTIMATE FINDING OF FACT

The expenses of sponsoring the LeFevre seminars in 1978 and 1979 were not ordinary and necessary business expenses of petitioner.

OPINION

Petitioner contends that the expenses of presenting the LeFevre seminars are deductible under section 162(a) as educational expenses for employees and/or institutional or "good will" advertising expenses of petitioner. Respondent disputes petitioner's characterization of the expenses as ordinary and necessary educational expense or advertising expense and contends that the expenses are either personal expenses of Robert D. Love for the advocacy of his own personal philosophy or are lobbying expenses declared nondeductible by section 1.162-20, Income Tax Regs.

Petitioner has the burden of proving that it is entitled to deductions specifically authorized by Congress. *Welch v. Helvering*, 290 U.S. 111 (1933); *New Colonial Ice Co. v. Helvering*, 292 U.S. 435 (1934); Rule 142(a), Tax Court Rules of Practice and Procedure. Deductibility under section 162(a) is dependent upon the taxpayer's establishing that an expense is "normal, usual or customary" in the taxpayer's trade or business and reasonable in relation to its purpose. *Deputy v. du Pont*, 308 U.S. 488, 495 (1940); *United States v. Haskel Engineering & Supply Co.*, 380 F.2d 786, 788-789 (9th Cir. 1967); *Boser v. Commissioner*, 77 T.C. 1124, 1132-1133 (1981), affd. without published opinion (9th Cir., Dec. 22, 1983).

As we said in *Carroll v. Commissioner*, 51 T.C. 213 (1968), affd. 418 F.2d 91 (7th Cir. 1969): "There are many expenses which are helpful, even essential, to one's business activities, but which are not deductible in our tax system." 51 T.C. at 215. Thus, "before expenses will be considered ordinary and necessary under section 162, it must be established that they bear a proximate and direct relationship to the taxpayer's trade or business." There must be a showing of a "direct and substantial relationship" and not merely a tenuous one between educational expenses of an employee and the skills required in his employment before such expenses may be deducted. 51 T.C. at 218.[2]

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2. *Carroll v. Commissioner*, 51 T.C. 213 (1968), affd. 418 F.2d 91 (7th Cir. 1969), as well as other authorities cited by both parties and relied upon herein, concerned the deductibility of expenses incurred by an individual for his own education. Similar considerations should apply in the present case where the issue is the deductibility of expenditures incurred by an employer. Cf. *Anaheim Paper Mill Supplies, Inc. v. Commissioner*, T.C. Memo. 1978-86.

In *Schwartz v. Commissioner*, 69 T.C. 877, 889 (1978), we referred to the taxpayer's burden of proof as that which would "justify our concluding that there was a sufficient nexus between the educational expenditures and petitioner's trade or business."

As respondent concedes, it is doubtful that any business person would take exception to espousal of the qualities of individual freedom, responsibility, self-reliance, fair dealing, dependability, service, hard work, thrift, honesty, truthfulness, and integrity—those qualities central to the Love philosophical prospective. Thus, it is not surprising that the testimony of witnesses for petitioner that the seminars were helpful to the participants is uncontradicted. It is also apparent, however, as admitted by those witnesses, that such qualities are useful outside of the business context and in their personal lives. On the other hand, the fact that a corporate activity is consistent with the personal philosophy of its president cannot, standing alone, disqualify the expenses of that activity from deductibility, because business management philosophy can seldom, if ever, be totally isolated from personal convictions. The focus, therefore, must be on the primary purpose of the expenditures in question as it may be inferred from the totality of facts concerning the benefits to be achieved, the direct relationship of those benefits to petitioner's business, and the reasonableness of the expenses. On the basis of the entire record in this case, we conclude that petitioner has not established that the expenses were normal, usual, customary, or reasonable or that they had the necessary proximate relationship to petitioner's business.

In support of its claims that it has established a direct relationship between the LeFevre seminars and maintain-

ing or improving job-related skills, petitioner cites testimony of salesman Thomas Hildy, an employee of Sooner Box Company, a wholly owned subsidiary of petitioner. That testimony, in response to leading questions of petitioner's counsel, was as follows:

> Q. Did you feel that the LeFevre seminar helped you in your skills in this area of being self reliant, having responsibility on your own?
>
> A. Yes. It further defined what was stated when I was hired, that you're on your own, basically. Be an honest person, do the best job you can, work hard, and the success will come. We're here to back you up to the fullest extent necessary that you ask for.
>
> Q. What about these other attitudes you've heard discussed here like excellence, hard work, honesty, truthfulness, free enterprise, benefits of a voluntary marketplace, were all those discussed at the LeFevre seminar?
>
> A. Yes, they were.
>
> * * *
>
> Q. Do you feel like that LeFevre seminar in all those areas was helpful to you in addressing those skills?
>
> A. Yes.
>
> Q. Do you think you need those skills to succeed and rise up in Love Box Company.
>
> A. I would think you'd need those skills to be successful in any endeavor.

Q. But all companies don't allow you those freedoms, is that right?

A. That's right. That's right.[3]

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3. Petitioner similarly relies on equally uncontrovertible but noncompelling testimony of Robert D. Love as follows:

Q. Do you think they're ordinary and necessary expenses for you, for your company?

A. I have always felt that they were a part of the training just the same as the technical training to teach a man the different kinds of flutes, the different grades of paper, the different kinds of printing, the different kinds of inks. He also has to have a philosophical position about his work. That if he was just going to come 8:00 to 5:00 and that's all we got from him, I wasn't interested. We had to have somebody who was with us spiritually, mentally, and physically.

* * *

Q. And that the LeFevre seminars had a similar defense mode, is that correct, Sir?

A. Educational, defense, whatever, we wanted our employees to be constantly educated as to what they could do in their work-a-day life in our factory to constantly promote the idea of freedom, creativeness, individual responsibility, so that when you're running around with a myriad of problems and a myriad of customers, they could make as many decisions as they possibly could at the level they were at. That's called keeping down the transaction costs. If you have to call up New York, which a lot of our competitors do, to get a price for a corrugated box, we beat their ears off in the process by being able to do it right in the man's office at the time.

* * *

Q. In your opinion, did that help to develop skills that your employees need in doing the best job for your company as you operate?

A. Absolutely. In 1947 I called on Mr. Wilkins at the Ark City Flour Mills which made an indelible impression on me, and I walked in his office and he asked me to quote him a price on corrugated boxes, and my practice up to that point had been to either call back to the factory to some degree, or many people would let me call on them, but then when I'd leave their office they'd call my father and give him the order. So I had to learn to live with that. But Mr. Wilkins was testing me, I'm sure. He said he had never bought from us, we have never sold him a thing. He

(Continued on following page)

We agree with petitioner that Hildy's testimony is representative, but we disagree with petitioner's argument as to the weight to be given to it. Hildy testified only that he was a salesman and that he was given "substantial responsibility and freedom to go out to sell a box." He did not identify any specialized skills that were required of him, and he in no way distinguished the benefits of the LeFevre seminar to his work from the benefits that might have assisted an employee in any capacity in any company.

As evidence that the LeFevre seminars "improved specific job related skills required by petitioner's employees," petitioner cites testimony no more specific than the following testimony of the president of one of petitioner's customers:

> Q. Do you believe that these seminars of LeFevre tend to improve the skills of employees that are necessary for the jobs that they're doing, that you've heard discussed here this morning? And let me take you back to 1978 and 1979, those two years of the seminars.

Footnote continued—

> said, I want a price on a box and you're not going to call your office, you're on your own. So I gave him a price. He gave me an order. I found out that the price was almost the same as what he [was] paying. He was very impressed.
>
> Well, that concept of freedom I wanted for every salesman that we would ever have, for him to be able to have enough knowledge, enough confidence in himself, that when he went out he would be able to quote that customer on the spot. There's nothing worse in business than having some salesman call on you, first of all, that doesn't know his product, has no authority, and can't make a decision. And I wanted our people, because of this philosophy of individual freedom and the idea that you can't control another human being, to be out there and to be able to know our product and our company well enough that they could make those decisions on the spot. And it has paid off tremendously.

A. I certainly would. I think that people who feel good about themselves are more productive people. And all businesses, in the final analysis, are people business. You do everything you can to get your employees to feel good about themselves and have a good sense of direction. When you do that, you have vastly better and more productive employees.

* * *

A. I think employees who feel good about themselves are more productive and better employees. And, yes, I think people who attend this kind of a seminar, it helps them to get a broad picture, a philosophical outlet, direction, and yes, I think that helps them a lot.

To say that the Love philosophical perspective was useful in the performance of the individual's duties is no more compelling than to say that good health or general undergraduate education in the liberal arts is useful. The expenses of such general education programs are not deductible by individuals because the necessary direct and proximate relationship between such courses and job skills cannot usually be shown to exist. See *Carroll v. Commissioner, supra; Krist v. Commissioner,* 483 F.2d 1345 (2d Cir. 1973), revg. a Memorandum Opinion of this Court. While some employers may reimburse their employees for the cost of general education, such reimbursement is allowed as a deduction to the corporation, if at all, on the theory that it is compensation to the individuals. See, e.g., *Anaheim Paper Mill Supplies, Inc. v. Commissioner,* T.C. Memo. 1978-86; *Morgan v. Commissioner,* T.C. Memo. 1980-505. Petitioner has not contended and has not shown that the cost of the education was intended as compensation to the employees in this instance.

In any event, we are not persuaded that the expenditures in question were reasonable expenditures for education of a general nature provided for a total of only 16 of petitioner's 600 employees. The same educational messages could have been conveyed to a larger group of petitioner's employees for the same or comparable costs if they were "necessary" in the sense of section 162(a). See *Boser v. Commissioner,* 77 T.C. 1124, 1133 (1981), affd. without published opinion (9th Cir., Dec. 22, 1983).

The relationship between the nonemployee attendees of the seminars and the business of the company is similarly too tenuous to support a deduction for advertising expense. Section 1.162-20(a)(2), Income Tax Regs., provides as follows:

> (2) *Institutional or "good will" advertising.* Expenditures for institutional or "good will" advertising which keeps the taxpayer's name before the public are generally deductible as ordinary and necessary business expenses provided the expenditures are related to the patronage the taxpayer might reasonably expect in the future. For example, a deduction will ordinarily be allowed for the cost of advertising which keeps the taxpayer's name before the public in connection with encouraging contributions to such organizations as the Red Cross, the purchase of United States Savings Bonds, or participation in similar causes. In like fashion, expenditures for advertising which presents views on economic, financial, social, or other subjects of a general nature, but which does not involve any of the activities specified in paragraph (b) or (c) of this section for which a deduction is not allowable, are deductible if they otherwise meet the requirements of the regulations under section 162.

Petitioner has not adequately shown, however, that the sponsoring of the seminars kept the taxpayer's name before the public or that the expenditures were related to the patronage the taxpayer might reasonably expect in the future. The manner of publicizing the seminars and the number of attendees was far too limited to be considered as affecting "the public" in any reasonable use of the word. Moreover, petitioner presented no evidence that the decision of any customer or prospective customer to use or not to use petitioner's product was influenced by the seminars. Notwithstanding the subjective opinions of the value of the Love philosophical perspective to petitioner's business testified to by Robert D. Love and other witnesses, any increase in petitioner's business may have been totally coincidental with and unrelated to the seminars. The testimony did not isolate the seminars as a factor apart from the comprehensive advertising program of the company conducted by more usual and customary means. The relationship between the seminars and the personal interests of Robert D. Love, however, is obviously more than coincidental. The generalized and self-serving testimony of petitioner's witnesses with respect to the benefits to be derived from the seminars cannot, therefore, carry petitioner's burden of proof, regardless of the failure or inability of respondent to contradict their assertions.

We have examined the other arguments made and authorities cited by the parties and find them unpersuasive. While the cases cited by the respective parties may stand generally for the propositions that they are cited for in the briefs, each of them is factually distinguishable. This case must be decided on its particular facts, and on that basis we conclude that petitioner has

not sustained its burden of proving that the expenses of the LeFevre seminars were ordinary and necessary expenses of petitioner's business.

Decision will be entered under Rule 155.

APPENDIX C

TREASURY REGULATIONS

§1.162-5 Expenses for education. (TD 6291, filed 4-3-58; republished in TD 6500, filed 11-25-60; amended by TD 6918, filed 5-1-67.)

(a) General rule. Expenditures made by an individual for education (including research undertaken as part of his educational program) which are not expenditures of a type described in paragraph (b)(2) or (3) of this section are deductible as ordinary and necessary business expenses (even though the education may lead to a degree) if the education—

(1) Maintains or improves skills required by the individual in his employment or other trade or business, or

(2) Meets the express requirements of the individual's employer, or the requirements of applicable law or regulations, imposed as a condition to the retention by the individual of an established employment relationship, status, or rate of compensation.

(b) Nondeductible educational expenditures—(1) In general. Educational expenditures described in subparagraphs (2) and (3) of this paragraph are personal expenditures or constitute an inseparable aggregate of personal and capital expenditures and, therefore, are not deductible as ordinary and necessary business expenses even though the education may maintain or improve skills required by the individual in his employment or other trade or business or may meet the express requirements of the individual's employer or of applicable law or regulations.

(2) Minimum educational requirements. (i) The first category of nondeductible educational expenses within the scope of subparagraph (1) of this paragraph are expenditures made by an individual for education which is required of him in order to meet the minimum educational requirements for qualification in his employment or other trade or business. The minimum education necessary to qualify for a position or other trade or business must be determined from a consideration of such factors as the requirements of the employer, the applicable law and regulations, and the standards of the profession, trade, or business involved. The fact that an individual is already performing service in an employment status does not establish that he has met the minimum educational requirements for qualification in that employment. Once an individual has met the minimum educational requirements for qualification in his employment or other trade or business (as in effect when he enters the employment or trade or business), he shall be treated as continuing to meet those requirements even though they are changed.

(ii) The minimum educational requirements for qualification of a particular individual in a position in an educational institution is the minimum level of education (in terms of aggregate college hours or degree) which under the applicable laws or regulations, in effect at the time this individual is first employed in such position, is normally required of an individual initially being employed in such a position. If there are no normal requirements as to the minimum level of education required for a position in an educational institution, then an individual in such a position shall be considered to have met the minimum educational requirements for qualification

in that position when he becomes a member of the faculty of the educational institution. The determination of whether an individual is a member of the faculty of an educational institution must be made on the basis of the particular practices of the institution. However, an individual will ordinarily be considered to be a member of the faculty of an institution if (a) he has tenure or his years of service are being counted toward obtaining tenure; (b) the institution is making contributions to a retirement plan (other than Social Security or a similar program) in respect of his employment; or (c) he has a vote in faculty affairs.

(iii) The application of this subparagraph may be illustrated by the following examples:

Example (1). General facts: State X requires a bachelor's degree for beginning secondary school teachers which must include 30 credit hours of professional educational courses. In addition, in order to retain his position, a secondary school teacher must complete a fifth year of preparation within 10 years after beginning his employment. If an employing school official certifies to the State Department of Education that applicants having a bachelor's degree and the required courses in professional education cannot be found, he may hire individuals as secondary school teachers if they have completed a minimum of 90 semester hours of college work. However, to be retained in his position, such an individual must obtain his bachelor's degree and complete the required professional educational courses within 3 years after his employment commences. Under these facts, a bachelor's degree, without regard to whether it includes 30 credit hours of professional educational courses, is considered to be the minimum educational requirement

for qualification as a secondary school teacher in State X. This is the case notwithstanding the number of teachers who are actually hired without such a degree. The following are examples of the application of these facts in particular situations:

Situation 1. A, at the time he is employed as a secondary school teacher in State X, has a bachelor's degree including 30 credit hours of professional educational courses. After his employment, A completes a fifth college year of education and, as a result, is issued a standard certificate. The fifth college year of education undertaken by A is not education required to meet the minimum educational requirements for qualification as a secondary school teacher. Accordingly, the expenditures for such education are deductible unless the expenditures are for education which is part of a program of study being pursued by A which will lead to qualifying him in a new trade or business.

Situation 2. Because of a shortage of applicants meeting the stated requirements, B, who has a bachelor's degree, is employed as a secondary school teacher in State X even though he has only 20 credit hours of professional educational courses. After his employment, B takes an additional 10 credit hours of professional educational courses. Since these courses do not constitute education required to meet the minimum educational requirements for qualification as a secondary school teacher which is a bachelor's degree and will not lead to qualifying B in a new trade or business, the expenditures for such courses are deductible.

Situation 3. Because of a shortage of applicants meeting the stated requirements, C is employed as a secondary

school teacher in State X although he has only 90 semester hours of college work towards his bachelor's degree. After his employment, C undertakes courses leading to a bachelor's degree. These courses (including any courses in professional education) constitute education required to meet the minimum educational requirements for qualification as a secondary school teacher. Accordingly, the expenditures for such education are not deductible.

Situation 4. Subsequent to the employment of A, B, and C, but before they have completed a fifth college year of education, State X changes its requirements affecting secondary school teachers to provide that beginning teachers must have completed 5 college years of preparation. In the cases of A, B, and C, a fifth college year of education is not considered to be education undertaken to meet the minimum educational requirements for qualification as a secondary school teacher. Accordingly, expenditures for a fifth year of college will be deductible unless the expenditures are for education which is part of a program being pursued by A, B, or C which will lead to qualifying him in a new trade or business.

Example (2). D, who holds a bachelor's degree, obtains temporary employment as an instructor at University Y and undertakes graduate courses as a candidate for a graduate degree. D may become a faculty member only if he obtains a graduate degree and may continue to hold a position as instructor only so long as he shows satisfactory progress towards obtaining this graduate degree. The graduate courses taken by D constitute education required to meet the minimum educational requirements for qualification in D's trade or business and, thus, the expenditures for such courses are not deductible.

Example (3). E, who has completed 2 years of a normal 3-year law school course leading to a bachelor of laws degree (LL.B.), is hired by a law firm to do legal research and perform other functions on a full-time basis. As a condition to continued employment, E is required to obtain an LL.B. and pass the State bar examination. E completes his law school education by attending night law school, and he takes a bar review course in order to prepare for the State bar examination. The law courses and bar review course constitute education required to meet the minimum educational requirements for qualification in E's trade or business and, thus, the expenditures for such courses are not deductible.

(3) Qualification for new trade or business. (i) The second category of nondeductible educational expenses within the scope of subparagraph (1) of this paragraph are expenditures made by an individual for education which is part of a program of study being pursued by him which will lead to qualifying him in a new trade or business. In the case of an employee, a change of duties does not constitute a new trade or business if the new duties involve the same general type of work as is involved in the individual's present employment. For this purpose, all teaching and related duties shall be considered to involve the same general type of work. The following are examples of changes in duties which do not constitute new trades or businesses:

(a) Elementary to secondary school classroom teacher.

(b) Classroom teacher in one subject (such as mathematics) to classroom teacher in another subject (such as science).

(c) Classroom teacher to guidance counselor.

(d) Classroom teacher to principal.

(ii) The application of this subparagraph to individuals other than teachers may be illustrated by the following examples:

Example (1). A, a self-employed individual practicing a profession other than law, for example, engineering, accounting, etc., attends law school at night and after completing his law school studies receives a bachelor of laws degree. The expenditures made by A in attending law school are nondeductible because this course of study qualifies him for a new trade or business.

Example (2). Assume the same facts as in example (1) except that A has the status of an employee rather than a self-employed individual, and that his employer requires him to obtain a bachelor of laws degree. A intends to continue practicing his nonlegal profession as an employee of such employer. Nevertheless, the expenditures made by A in attending law school are not deductible since this course of study qualifies him for a new trade or business.

Example (3). B, a general practitioner of medicine, takes a 2-week course reviewing developments in several specialized fields of medicine. B's expenses for the course are deductible because the course maintains or improves skills required by him in his trade or business and does not qualify him for a new trade or business.

Example (4). C, while engaged in the private practice of psychiatry, undertakes a program of study and training at an accredited psychoanalytic institute which will lead to qualifying him to practice psychoanalysis. C's

expenditures for such study and training are deductible because the study and training maintains or improves skills required by him in his trade or business and does not qualify him for a new trade or business.

(c) Deductible educational expenditures—(1) maintaining or improving skills. The deduction under the category of expenditures for education which maintains or improves skills required by the individual in his employment or other trade or business includes refresher courses or courses dealing with current developments as well as academic or vocational courses provided the expenditures for the courses are not within either category of nondeductible expenditures described in paragraph (b) (2) or (3) of this section.

(2) Meeting requirements of employer. An individual is considered to have undertaken education in order to meet the express requirements of his employer, or the requirements of applicable law or regulations, imposed as a condition to the retention by the taxpayer of his established employment relationship, status, or rate of compensation only if such requirements are imposed for a bona fide business purpose of the individual's employer. Only the minimum education necessary to the retention by the individual of his established employment relationship, status, or rate of compensation may be considered as undertaken to meet the express requirements of the taxpayer's employer. However, education in excess of such minimum education may qualify as education undertaken in order to maintain or improve the skills required by the taxpayer in his employment or other trade or business (see subparagraph (1) of this paragraph). In no event, however, is a deduction allowable for expenditures for education which, even though for

education required by the employer or applicable law or regulations, are within one of the categories of non-deductible expenditures described in paragraph (b)(2) and (3) of this section.

(d) Travel as a form of education. Subject to the provisions of paragraph (b) and (e) of this section, expenditures for travel (including travel while on sabbatical leave) as a form of education are deductible only to the extent such expenditures are attributable to a period of travel that is directly related to the duties of the individual in his employment or other trade or business. For this purpose, a period of travel shall be considered directly related to the duties of an individual in his employment or other trade or business only if the major portion of the activities during such period is of a nature which directly maintains or improves skills required by the individual in such employment or other trade or business. The approval of a travel program by an employer or the fact that travel is accepted by an employer in the fulfillment of its requirements for retention of rate of compensation, status or employment, is not determinative that the required relationship exists between the travel involved and the duties of the individual in his particular position.

(e) Travel away from home. (1) If an individual travels away from home primarily to obtain education the expenses of which are deductible under this section, his expenditures for travel, meals, and lodging while away from home are deductible. However, if as an incident of such trip the individual engages in some personal activity such as sightseeing, social visiting, or entertaining, or other recreation, the portion of the expenses attributable to such personal activity constitutes non-

deductible personal or living expenses and is not allowable as a deduction. If the individual's travel away from home is primarily personal, the individual's expenditures for travel, meals and lodging (other than meals and lodging during the time spent in participating in deductible education pursuits) are not deductible.

Whether a particular trip is primarily personal or primarily to obtain education the expenses of which are deductible under this section depends upon all the facts and circumstances of each case. An important factor to be taken into consideration in making the determination is the relative amount of time devoted to personal activity as compared with the time devoted to educational pursuits. The rules set forth in this paragraph are subject to the provisions of section 162(a)(2), relating to deductibility of certain traveling expenses, and section 274(c) and (d), relating to allocation of certain foreign travel expenses and substantiation required, respectively, and the regulations thereunder.

(2) Examples. The application of this subsection may be illustrated by the following examples:

Example (1). A, a self-employed tax practitioner, decides to take a 1-week course in new developments in taxation, which is offered in City X, 500 miles away from his home. His primary purpose in going to X is to take the course, but he also takes a side trip to City Y (50 miles from X) for 1 day, takes a sightseeing trip while in X, and entertains some personal friends. A's transportation expenses to City X and return to his home are deductible but his transportation expenses to City Y are not deductible. A's expenses for meals and lodging while away from home will be allocated between his

educational pursuits and his personal activities. Those expenses which are entirely personal, such as sightseeing and entertaining friends, are not deductible to any extent.

Example (2). The facts are the same as in example (1) except that A's primary purpose in going to City X is to take a vacation. This purpose is indicated by several factors, one of which is the fact that he spends only 1 week attending the tax course and devotes 5 weeks entirely to personal activities. None of A's transportation expenses are deductible and his expenses for meals and lodging while away from home are not deductible to the extent attributable to personal activities. His expenses for meals and lodging allocable to the week attending the tax course are, however, deductible.

Example (3). B, a high school mathematics teacher in New York City, in the summertime travels to a university in California in order to take a mathematics course the expense of which is deductible under this section. B pursues only one-fourth of a full course of study and the remainder of her time is devoted to personal activities the expense of which is not deductible. Absent a showing by B of a substantial nonpersonal reason for taking the course in the university in California, the trip is considered taken primarily for personal reasons and the cost of traveling from New York City to California and return would not be deductible. However, one-fourth of the cost of B's meals and lodging while attending the university in California may be considered properly allocable to deductible educational pursuits and, therefore, is deductible.

* * *

§1.162-20 Expenditures attributable to lobbying, political campaigns, attempts to influence legislation, etc., and certain advertising. (TD 6819, filed 4-19-65; amended by TD 6996, filed 1-17-69.)

(a) In general—(1) Scope of section. This section contains rules governing the deductibility or non-deductibility of expenditures for lobbying purposes, for the promotion or defeat of legislation, for political campaign purposes (including the support of or opposition to any candidate for public office) or for carrying on propaganda (including advertising) related to any of the foregoing purposes. For rules applicable to such expenditures in respect of taxable years beginning before January 1, 1963, and for taxable years beginning after December 31, 1962, see paragraph (b) and (c), respectively, of this section. This section also deals with expenditures for institutional or "good will" advertising.

(2) Institutional or "good will" advertising. Expenditures for institutional or "good will" advertising which keeps the taxpayer's name before the public are generally deductible as ordinary and necessary business expenses provided the expenditures are related to the patronage the taxpayer might reasonably expect in the future. For example, a deduction will ordinarily be allowed for the cost of advertising which keeps the taxpayer's name before the public in connection with encouraging contributions to such organizations as the Red Cross, the purchase of United States Savings Bonds, or participation in similar causes. In like fashion, expenditures for advertising which presents views on economic, financial, social, or other subjects of a general nature, but which does not involve any of the activities specified in paragraph (b) or (c) of this section for which a deduction is not allow-

able, are deductible if they otherwise meet the requirements of the regulations under section 162.

(b) Taxable years beginning before January 1, 1963 —(1) In general. (i) For taxable years beginning before January 1, 1963, expenditures for lobbying purposes, for the promotion or defeat of legislation, for political campaign purposes (including the support of or opposition to any candidate for public office), or for carrying on propaganda (including advertising) related to any of the foregoing purposes are not deductible from gross income. For example, the cost of advertising to promote or defeat legislation or to influence the public with respect to the desirability or undesirability of proposed legislation is not deductible as a business expense, even though the legislation may directly affect the taxpayer's business.

(ii) If a substantial part of the activities of an organization, such as a labor union or a trade association, consists of one or more of the activities specified in the first sentence of this subparagraph, deduction will be allowed only for such portion of the dues or other payments to the organization as the taxpayer can clearly establish is attributable to activities other than those specified. The determination of whether such specified activities constitute a substantial part of an organization's activities shall be based on all the facts and circumstances. In no event shall special assessments or similar payments (including an increase in dues) made to any organization for any such specified purposes be deductible. For other provisions relating to the deductibility of dues and other payments to an organization, such as a labor union or a trade association, see paragraph (c) of §1.162-15.

(2) Expenditures for promotion or defeat of legislation. For purposes of this paragraph, expenditures for the promotion or the defeat of legislation include, but shall not be limited to, expenditures for the purpose of attempting to—

(i) Influence members of a legislative body directly, or indirectly by urging or encouraging the public to contact such members for the purpose of proposing, supporting, or opposing legislation, or

(ii) Influence the public to approve or reject a measure in a referendum, initiative, vote on a constitutional amendment, or similar procedure.

(c) Taxable years beginning after December 31, 1962 —(1) In general. For taxable years beginning after December 31, 1962, certain types of expenses incurred with respect to legislative matters are deductible under section 162(a) if they otherwise meet the requirements of the regulations under section 162. These deductible expenses are described in subparagraph (2) of this paragraph. All other expenditures for lobbying purposes, for the promotion or defeat of legislation (see paragraph (b)(2) of this section), for political campaign purposes (including the support of or opposition to any candidate for public office), or for carrying on propaganda (including advertising) relating to any of the foregoing purposes are not deductible from gross income for such taxable years. For the disallowance of deductions for bad debts and worthless securities of a political party, see §1.271-1. For the disallowance of deductions for certain indirect political contributions, such as the cost of certain advertising and the cost of admission to certain dinners, programs, and inaugural events, see §1.276-1.

(2) Appearances, etc., with respect to legislation—(i) General rule. Pursuant to the provisions of section 162(e), expenses incurred with respect to legislative matters which may be deductible are those ordinary and necessary expenses (including, but not limited, to traveling expenses described in section 162(a)(2) and the cost of preparing testimony) paid or incurred by the taxpayer during a taxable year beginning after December 31, 1962, in carrying on any trade or business which are in direct connection with—

(a) appearances before, submission of statements to, or sending communications to, the committees, or individual members of Congress or of any legislative body of a State, a possession of the United States, or a political subdivision of any of the foregoing with respect to legislation or proposed legislation of direct interest to the taxpayer, or

(b) communication of information between the taxpayer and an organization of which he is a member with respect to legislation or proposed legislation of direct interest to the taxpayer and to such organization.

For provisions relating to dues paid or incurred with respect to an organization of which the taxpayer is a member, see subparagraph (3) of this paragraph.

(ii) Legislation or proposed legislation of direct interest to the taxpayer—(a) Legislation or proposed legislation. The term "legislation or proposed legislation" includes bills and resolutions introduced by a member of Congress or other legislative body referred to in subdivision (i)(a) of this subparagraph for consideration by such body as well as oral or written proposals for legislative action submitted to the legislative body or to a committee or member of such body.

(b) Direct interest—(1) In general.

(i) Legislation or proposed legislation is of direct interest to a taxpayer if the legislation or proposed legislation is of such a nature that it will, or may reasonably be expected to, affect the trade or business of the taxpayer. It is immaterial whether the effect, or expected effect, on the trade or business will be beneficial or detrimental to the trade or business or whether it will be immediate. If legislation or proposed legislation has such a relationship to a trade or business that the expenses of any appearance or communication in connection with the legislation meets the ordinary and necessary test of section 162(a), then such legislation ordinarily meets the direct interest test of section 162(e). However, if the nature of the legislation or proposed legislation is such that the likelihood of its having an effect on the trade or business of the taxpayer is remote or speculative, the legislation or proposed legislation is not of direct interest to the taxpayer. Legislation or proposed legislation which will not affect the trade or business of the taxpayer is not of direct interest to the taxpayer even though such legislation will affect the personal, living, or family activities or expenses of the taxpayer. Legislation or proposed legislation is not of direct interest to a taxpayer merely because it may affect business in general; however, if the legislation or proposed legislation will, or may reasonably be expected to, affect the taxpayer's trade or business it will be of direct interest to the taxpayer even though it also will affect the trade or business of the other taxpayers or business in general. To meet the direct interest test, it is not necessary that all provisions of the legislation or proposed legislation have an effect, or expected effect, on

the taxpayer's trade or business. The test will be met if one of the provisions of the legislation has the specified effect. Legislation or proposed legislation will be considered to be of direct interest to a membership organization if it is of direct interest to the organization, as such, or if it is of direct interest to one or more of its members.

(ii) Legislation which would increase or decrease the taxes applicable to the trade or business, increase or decrease the operating costs or earnings of the trade or business, or increase or decrease the administrative burdens connected with the trade or business meets the direct interest test. Legislation which would increase the social security benefits or liberalize the right to such benefits meets the direct interest test because such changes in the social security benefits may reasonably be expected to affect the retirement benefits which the employer will be asked to provide his employees or to increase his taxes. Legislation which would impose a retailer's sales tax is of direct interest to a retailer because, although the tax may be passed on to his customers, collection of the tax will impose additional burdens on the retailer, and because the increased cost of his products to the consumer may reduce the demand for them. Legislation which would provide an income tax credit or exclusion for shareholders is of direct interest to a corporation, because those tax benefits may increase the sources of capital available to the corporation. Legislation which would favorably or adversely affect the business of a competitor so as to affect the taxpayer's competitive position is of direct interest to the taxpayer. Legislation which would improve the school system of a community is of direct interest to a membership organization comprised of employers in the com-

munity because the improved school system is likely to make the community more attractive to prospective employees of such employers. On the other hand, proposed legislation relating to Presidential succession in the event of the death of the President has only a remote and speculative effect on any trade or business and therefore does not meet the direct interest test. Similarly, if a corporation is represented before a congressional committee to oppose an appropriation bill merely because of a desire to bring increased Government economy with the hope that such economy will eventually cause a reduction in the Federal income tax, the legislation does not meet the direct interest test because any effect it may have upon the corporation's trade or business is highly speculative.

(2) Appearances, etc., by expert witnesses. (i) An appearance or communication (of a type described in paragraph (c)(2)(i)(a) of this section) by an individual in connection with legislation or proposed legislation shall be considered to be with respect to legislation of direct interest to such individual if the legislation is in a field in which he specializes as an employee, if the appearance or communication is not on behalf of his employer, and if it is customary for individuals in his type of employment to publicly express their views in respect of matters in their field of competence. Expenses incurred by such an individual in connection with such an appearance or communication, including traveling expenses properly allocable thereto, represent ordinary and necessary business expenses and are, therefore, deductible under section 162. For example, if a university professor who teaches in the field of money and banking appears, on his own behalf, before a legislative committee to testify

on proposed legislation regarding the banking system, his expenses incurred in connection with such appearance are deductible under section 162 since university professors customarily take an active part in the development of the law in their field of competence and publicly communicate the results of

(ii) An appearance or communication (of a type described in paragraph (c)(2)(i)(a) of this section) by an employee or self-employed individual in connection with legislation or proposed legislation shall be considered to be with respect to legislation of direct interest to such person if the legislation is in the field in which he specializes in his business (or as an employee) and if the appearance or communication is made pursuant to an invitation extended to him individually for the purpose of receiving his expert testimony. Expenses incurred by an employee or self-employed individual in connection with such an appearance or communication, including traveling expenses properly allocable thereto, represent ordinary and necessary business expenses and are, therefore, deductible under section 162. For example, if a self-employed individual is personally invited by a congressional committee to testify on proposed legislation in the field in which he specializes in his business, his expenses incurred in connection with such appearance are deductible under section 162. If a self-employed individual makes an appearance, on his own behalf, before a legislative committee without having been extended an invitation his expenses will be deductible to the extent otherwise provided in this paragraph.

(3) Nominations, etc. A taxpayer does not have a direct interest in matters such as nominations, appointments, or the operation of the legislative body.

(iii) Allowable expenses. To be deductible under section 162(a), expenditures which meet the tests of deductibility under the provisions of this paragraph must also qualify as ordinary and necessary business expenses under section 162(a) and, in addition, be in direct connection with the carrying on of the activities specified in subdivision (i)(a) or (i)(b) of this subparagraph. For example, a taxpayer appearing before a committee of the Congress to present testimony concerning legislation or proposed legislation in which he has a direct interest may deduct the ordinary and necessary expenses directly connected with his appearance, such as traveling expenses described in section 162(a)(2), and the cost of preparing testimony.

(3) Deductibility of dues and other payments to an organization. If a substantial part of the activities of an organization, such as a labor union or a trade association, consists of one or more of the activities to which this paragraph relates (legislative matters, political campaigns, etc.,) exclusive of any activity constituting an appearance or communication with respect to legislation or proposed legislation of direct interest to the organization (see subparagraph (2)(ii)(b)(1)), a deduction will be allowed only for such portion of the dues or other payments to the organization as the taxpayer can clearly establish is attributable to activities to which this paragraph does not relate and to any activity constituting an appearance or communication with respect to legislation or proposed legislation of direct interest to the organization. The determination of whether a substantial part of an organization's activities consists of one or more of the activities to which this paragraph relates (exclusive of appearances or communications with re-

spect to legislation or proposed legislation of direct interest to the organization) shall be based on all the facts and circumstances. In no event shall a deduction be allowed for that portion of a special assessment or similar payment (including an increase in dues) made to any organization for any activity to which this paragraph relates if the activity does not constitute an appearance or communication with respect to legislation or proposed legislation of direct interest to the organization. If an organization pays or incurs expenses allocable to legislative activities which meet the tests of subdivisions (i) and (ii) of subparagraph (2) of this paragraph (appearances or communications with respect to legislation or proposed legislation of direct interest to the organization), on behalf of its members, the dues paid by a taxpayer are deductible to the extent used for such activities. Dues paid by a taxpayer will be considered to be used for such an activity, and thus deductible, although the legislation or proposed legislation involved is not of direct interest to the taxpayer, if, pursuant to the provisions of subparagraph (2)(ii)(b)(1) of this paragraph, the legislation or proposed legislation is of direct interest to the organization, as such, or is of direct interest to one or more members of the organization. For other provisions relating to the deductibility of dues and other payments to an organization, such as a labor union or a trade association, see paragraph (c) of §1.162-15.

(4) Limitations. No deduction shall be allowed under section 162(a) for any amount paid or incurred (whether by way of contribution, gift, or otherwise) in connection with any attempt to influence the general public, or segments thereof, with respect to legislative matters, elections, or referendums. For example, no de-

duction shall be allowed for any expenses incurred in connection with "grassroot" campaigns or any other attempts to urge or encourage the public to contact members of a legislative body for the purpose of proposing, supporting, or opposing legislation.